

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16179 of Eugene W. and D.M. Beacham on behalf of the Embassy of the Republic of Albania, pursuant to 11 DCMR 1001, for permission under Section 1002 to locate a chancery in a D/R-3 District at premises 2100 S Street, N.W. (Square 2533, Lot 800).

HEARING DATE: October 16, 1996
DECISION DATE: December 4, 1996

ORDER

INTRODUCTION:

This application was filed by Eugene W. and D.M. Beacham on behalf of the Embassy of Albania pursuant to Section 206 of the Foreign Missions Act (Title 11, Public Law 97-241, 92 Stat. 286, August 24, 1982) to locate a chancery at 2100 S Street, N.W. (Square 2533, Lot 800) in a D/R-3 District. Chapter 10 was adopted by the Zoning Commission to implement Section 206 of the Foreign Missions Act. The public hearing was conducted as a rulemaking proceeding under Chapter 33 of the Supplemental Rules of Practice and Procedure before the Foreign Missions Board of Zoning Adjustment.

APPLICATION:

The subject site is irregular in shape, and is located on the west side of Florida Avenue between S Street and Phelps Place. The site measures 2,700 square feet in land area, and is occupied by a 4-story brick Beaux Arts building built in 1910. The property is one of two lots in the triangular square, which is bounded by Florida Avenue, S Street and Phelps Place. The building is located in the Sheridan-Kalorama Historic District.

The property is located in the Diplomatic Overlay zone. The site received the Diplomatic Overlay designation in 1978, pursuant to Zoning Commission Order No. 237. Directly across 21st Street from the subject site, along the Connecticut Avenue corridor, is the C-3-B zone, a medium-bulk, major business and employment center zone.

The only other building in the square is a 3-story brick building used as both a residence and a dental office. Across Phelps Place from the subject square are the Friends Meeting House and the Costa Rican Chancery. Across 21st Street to the east are

the Chancery Annex of the Greek Embassy, the Bauman Foundation, offices and other commercial uses. Across S Street, at its intersection with Connecticut Avenue, is the Chancery of the Embassy of Moldova, and several other commercial uses. The Russia House and the Argentine Chancery Annex are around the corner on Connecticut Avenue. On S Street, in the R-3 zone to the west of the Moldovan Embassy, are several nonconforming multi-family condominium and apartment uses, as well as school, institutional and several other residential uses.

The Embassy of Albania is the contract purchaser of the property, and proposes to use the property for chancery purposes. The building contains approximately 8,600 square feet of gross floor area. Approximately 6,490 square feet of gross floor area on the upper three floors (floors 1 through 3) will be used for chancery purposes, with the ground floor devoted to residential use. There is a garage which accommodates one car, and a driveway on S Street which can accommodate two cars.

The applicant maintains that the interior of the building is suitable for the proposed chancery use, and will be maintained as such. The first floor contains a foyer area, three large rooms, and a kitchen. The second and third floors are almost identical in layout, each containing four rooms plus bathrooms.

The proposed use by the Embassy of Albania will be low in intensity. Currently, the Embassy has four diplomats and a driver. That number may increase by 1 or 2 diplomats and 1 staff member.

The regular business hours of the chancery will be Monday through Friday, 9:00 a.m. to 5:00 p.m. The Chancery will have about one visitor every one or two days. The applicant proposes three parking spaces - one in the garage and two in the circular driveway in front of the building.

A chancery in the D/R-3 zone is a permitted use subject to Board disapproval after review based upon the six criteria enumerated in Section 206(d) of the Foreign Missions Act and Section 1001 of the Zoning Regulations.

FOREIGN MISSIONS ACT CRITERIA

In considering the subject application, the Board must apply the specific criteria set forth in Section 1001, et seq., of Chapter 10 of the Zoning Regulations. A chancery shall be a permitted use in the Mixed Use Diplomatic District, subject to disapproval by the Board based on those criteria, which are as follows:

1. Section 1001.2. The international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation's Capital.

2. Section 1001.3 and 1001.4. Historic preservation, as determined by the Board in carrying out this Section; and in order to ensure compatibility with historic landmarks and historic districts, substantial compliance with District and federal regulations governing historic preservation shall be required with respect to new construction and to demolition of or alteration to historic landmarks.
3. Section 1001.5. The adequacy of off-street or other parking, and the extent to which the area will be served by public transportation to reduce parking requirements, subject to any special security requirements that may be determined by the Secretary of State, after consultation with federal agencies authorized to perform protective services.
4. Section 1001.6. The extent to which the area is capable of being adequately protected, as determined by the Secretary of State after consultation with federal agencies authorized to perform protective services.
5. Section 1001.7. The municipal interest, as determined by the Mayor.
6. Section 1001.8. The federal interest, as determined by the Secretary of State.

EVALUATION

With respect to the above-referenced six criteria set forth in the Zoning Regulations, the Board states the following:

1. The international obligation of the United States: By letter dated October 7, 1996, the Deputy Director of the Office of Foreign Missions of the Department of State, the delegated representative of the Secretary of State, determined that the international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation's Capital will be met by the approval of this application.
2. Historic preservation: The subject site is located in the Sheridan-Kalorama Historic District, but is not an individually-designated historic landmark. The four-story brick building was built in 1910. There will be no new construction, or demolition or alternation of the building. The applicant stated that the Embassy's proposed addition of a flagpole, official seal and plaques were reviewed and approved by the Historic Preservation Review Board on September 26, 1996.

The HPRB staff report and recommendation for the meeting of September 26, 1996 stated that the placement of the

plaques, coat-of-arms and flagpole is consistent with other embassies in the area. The Board concurs with this recommendation. Accordingly, there will be no adverse impact on the historic preservation objectives of the District of Columbia.

3. Parking and transportation: The Embassy receives on average approximately 10 to 15 visits per month for diplomatic business, that is, one visit every one or two days. This number is not expected to increase at the new site. Most business with the public is conducted by mail, telephone, telecopy or messenger. Most visitors to the Embassy use taxis and other public transportation. The chancery is presently located at 1511 K Street, 2 1/2 blocks from the Farragut North Red Line Metrorail Station. The new site is located 2 blocks north of the Dupont Circle Red Line Metrorail Station. There are a number of bus lines traveling in both directions on Connecticut and Florida Avenues, and the site is adjacent to major thoroughfares with ready access to taxis, so the current modes of visitor travel are expected to continue.

All of the diplomats live in close proximity to one another. The staff member drives the Ambassador to work, two diplomats drive together and the other diplomat also drives to work. All three cars are currently parked in

commercial garages. This commuting pattern is expected to continue at the new site.

The applicant noted that the subject site has parking space for three cars - one in the garage at Florida Avenue and Phelps Place and two in the circular driveway in front of the building on S Street. The applicant stated that by law the Embassy is entitled to up to 60 feet of diplomatic parking on the street along the front or side of the building. The embassy initially planned to request diplomatic parking designation for one to two parking spaces on Phelps Street.

The applicant's presentation included a report and testimony by an expert in traffic and parking analysis. His report and testimony indicated that the parking spaces in the area are generally occupied. Rarely are public parking spaces available on the street except for Decatur Street which is a few blocks from the subject site. He stated that there are six commercial public parking garages within a quarter mile of the site. They are as follows:

1. A garage operated by Atlantic Garages (AG) on the northwest side of Florida Avenue, east of Connecticut Avenue;

2. The Universal North garage on the south side of T Street, between Florida Avenue and Connecticut Avenue;
3. The Hilton Hotel garage on the north side of T Street, between Florida Avenue and Connecticut Avenue;
4. A garage at the Marriott Courtyard, at 1900 Connecticut Avenue;
5. The Ritz Carlton Hotel garage on the southwest side of Massachusetts Avenue between 21st and 22nd Streets; and
6. The Embassy Row Hotel garage on the northeast side of Massachusetts Avenue, between 20th and 21st Streets.

The traffic consultant stated that the three parking spaces on the site are adequate for existing staff. Presently, the staff uses public parking garages near the Albanian Embassy on K Street. The traffic consultant concluded that with the three spaces on site and an additional space or two on Phelps Street, there would be adequate parking for current staff and the growth of staff in the foreseeable future.

The Department of Public Works (DPW) by memorandum dated October 15, 1996 noted that the applicant's survey of parking in the area indicates that most of the adjacent streets in the residential neighborhood are covered by the Residential Permit Parking, except on Phelps Place where parking is controlled by metered parking.

To protect the residential on-street parking, the Department recommends that any parking provision for the chancery be limited to Phelps Place adjacent to the chancery. The number of spaces should be limited to no more than two spaces. The Department noted that there are several commercial parking facilities near the site to accommodate staff and visitors to the site.

DPW also made note of the Metrorail Stations nearby and the numerous bus routes operating near the site. DPW concluded that the site is ideally located with respect to public transportation.

In consideration of the limited parking demand generated by the chancery and the availability of commercial parking facilities in the area, plus the excellent location of the project with respect to mass transit, the Department of Public Works stated that it supports the proposal.

The Office of Planning (OP) submitted a report dated October 9, 1996 recommending approval of the application. With regard to parking, OP stated that under Chapter 21 of the Zoning Regulations,

no on-site parking would be required with the proposed use of the site as a foreign chancery. Even if parking were required, the building would be exempt from the requirement under Section 2100.5 of the Regulations because it is located in a historic district.

OP noted that the applicant plans to park in the driveway in front of the building. At the hearing OP testified that this is public space and questioned the Board's authority to allow parking on public space, requiring the applicant to seek official approval. OP stated that it would oppose the use of this space or parking.

The applicant submitted a memorandum dated November 25, 1996 arguing that the Board has jurisdiction to permit the public parking space to be used for parking of diplomatic vehicles.

The Board sought advice from the Office of the Corporation Counsel on the matter. Relying on counsel received, the Board determined that it lacks authority to allow parking in the space in question.

The Sheridan Kalorama Neighborhood Council (SKNC) and a number of area residents testified in opposition to the application on the grounds that the chancery use will create a need for parking which is inadequate in the area. The opponents noted that parking on S Street is unrestricted and they were concerned that the applicant would seek diplomatic parking privileges on S Street, thereby eliminating valuable spaces currently used by area residents.

The SKNC testified that resident parking on Phelps Place has been displaced by metered parking and possibly illegal curb cuts, further reducing the available space on S Street. Consequently, there are approximately 24 parking spaces for 258 households. The SKNC maintains that the nearby commercial lots do not provide sufficient convenient space, especially given that the Universal Building lot will be unavailable for the next two years.

Finally, SKNC testified that under the Zoning Regulations, eight parking spaces would be required for a Chancery with more than 6400 square feet - one space for every 800 square feet of space.

The Board determined that the parking requirement imposed on the applicant should be based on the Board's assessment of the intensity of the chancery use.

To address the neighbors' concerns about parking on S Street, the applicant agreed to seek diplomatic parking on Phelps Place. Further, the applicant proposed to secure parking at a commercial lot nearby if the number of staff increases.

In response to the issue raised about the legality of the curb cut at the site, the applicant testified that valid permits were received before the curb cuts were made. The applicant submitted

this documentation in a posthearing submission, Exhibit No. 86 of the record.

Based on the intensity of the proposed use and the number of visitors likely to come to the site, the Board determined that four off-street parking spaces should be provided.

4. Protection: The Office of Foreign Missions, in its letter of October 7, 1996 determined that pursuant to Section 4306(d)(4) of the Foreign Missions Act, the site and area are capable of being adequately protected.

Opponents to the application were concerned that the chancery would not be occupied at night and crime is likely to be a problem.

The applicant testified that the residential portion of the site will be used as a residence furthermore, a guard will patrol the site, thus alleviating any concerns about crime at or near the site.

5. Municipal Interest: The Director of the Office of Planning (OP) for the District of Columbia, the delegated representative of the Mayor, by memorandum dated February 7, 1995, determined that the applicant has met the burden of proof under Sections 1001 and 1002 of the Zoning Regulations relative to the location of the proposed chancery in a D/R-3 District. OP is of the opinion that the location of the chancery, as proposed, is not expected to create objectionable impacts on traffic and parking conditions in the general area, and recommends approval of the application.

One neighbor testified in support of the application based on the following:

- The staff at the chancery will be small;
- The facility will not be large;
- There are parking options that are agreeable. For example, parking on Phelps Place because residents will not want to feed the meters all day;
- The small number of visitors to the site and small number of cultural events proposed will cause minimal disruption;
- There are no plans to change the exterior of the site;
- The building is within the current character of the commercial zone;
- The purchase should be allowed without being contested to

eliminate perception that certain properties are likely to be sources of litigation;

- She has had no problems with living across from much more active or larger country embassies like the Dominican Republic and Thai Embassies; and
- She is pleased with the Secret Service protection provided by diplomatic uses.

Opponents to the application expressed the following concerns:

- The use should not be allowed because it would remove a very valuable asset from the tax base of the city;
- The chancery use will help erode the residential character of the neighborhood;
- Embassies in the community do not support private security; and
- It is unlikely that the applicant will be able to find commercial parking to serve the needs of the site.

The Board finds that part of the property will be used for residential purposes and the applicant will not alter the residential character of the site. The Board finds that with the ground floor to be occupied as the residence of a diplomat or staff person, in addition to the presence of the Secret Service, a safer condition will exist for the subject property and nearby properties. The Board finds that adequate parking can be found in the vicinity of the site.

6. Federal Interest: By letter dated October 7, 1996, from the Deputy Director, and by testimony of the legal counsel, the Office of Foreign Missions has determined that the location of the chancery for the Republic of Albania at 2100 S Street, N.W. is consistent with the federal interest. The Albanian government has recently amended its laws to allow foreigners to buy land. The State Department will authorize Albania to complete the purchase of the site if the Albanian government enables the U.S. Embassy to purchase land it currently leases in Tirana. While a reply on this matter has not yet been received from the Albanians, the State Department recognizes that Board approval is necessary for the purchase of the subject site to go forward. Therefore, the State Department supports the application as consistent with the federal interest.

ADVISORY NEIGHBORHOOD COMMISSION

The subject site is located within the boundaries of Advisory Neighborhood Commission (ANC) 1D. The Board received a letter dated October 15, 1996, signed by Robert Hirshberg, Chairman of

ANC-1D. In the letter he expressed support for the application because both the owner and contract purchaser of the property have strong presumptions in their favor. He stated that the Fourteenth Amendment property rights of the owners should be protected, and as to the Albanian Embassy, there are public policy considerations underlying the Foreign Missions Act to approve chancery uses in a Diplomatic Overlay Zone as being in the federal and municipal interest.

In testimony at the hearing, Mr. Hirshberg stated that in ANC 1D there are two commissioners, Kathleen Early and himself, that at the July 8, 1996 meeting both were present and that the two of them constituted a quorum. However, no official vote had been taken. He further stated that at the October 8, 1996 meeting, the ANC did take official action, deciding to support the application with a unanimous vote of a quorum of one.

Mr. Hirshberg requested that the position expressed in the letter he submitted be given great weight. He also asked the Board to allow him to cede the bulk of his speaking time to the Sheridan Kalorama Neighborhood Council, the principal community organization.

Mr. David Catania, a neighborhood resident representing the SKNC challenged the validity of Mr. Hirshberg's statement that he represents ANC-1D. Mr. Catania stated that there must be a majority vote for the ANC recommendation to have validity before the Board. ANC 1D consists of two Single Member Districts. When one commissioner is absent, there can be no majority because a majority is more than half. This ANC has a vacancy which cannot be filled within six months of the election. Therefore, for ANC-1D, there can be no recommendation because there is only one Commissioner. He argues that Mr. Hirshberg's recommendation does not count.

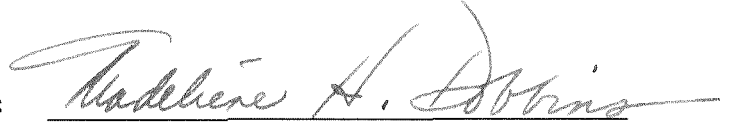
The Board finds that the ANC is not entitled to great weight because no vote was taken at the July 8th meeting with two commissioners present, and the October 8th meeting lacked a quorum with which to act.

On the basis of the record before it, the Board has determined that this application satisfies the criteria set forth in Section 1001 of Chapter 10 of the Zoning Regulations. Accordingly, it is **ORDERED** that this application is **APPROVED**, **SUBJECT** to the **CONDITION** that the applicant shall maintain one parking space in the garage on site and provide three parking spaces in a commercial garage nearby.

VOTE: 4-1 (John G. Parsons, Robert Gresham, Sheila Cross Reid and Angel F. Clarens **NOT TO DISAPPROVE** the application; Laura M. Richards opposed to the motion).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER:

DEC 20 1996

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS, UNLESS
WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR
CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER
AND REGULATORY AFFAIRS.

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